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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/787,781	05/24/2001	Jacques Benveniste	9320.123USWO	7504

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EXAMINER	
ALEXANDER, LYLE	

ART UNIT	PAPER NUMBER
1797	

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07/02/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/787,781	BENVENISTE ET AL.	
	Examiner	Art Unit	
	Lyle A. Alexander	1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 April 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *6,8-14,23-31 and 36-38* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *6,8-14,23-31 and 36-38* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Election/Restrictions

Applicant's election without traverse of group I, claims 6,8-14,23-31 and 36-38, in the reply filed on 4/21/08 is acknowledged. The Office regrets the typographical errors pointed out by Applicant in their 4/21/09 response and agrees with Applicant's characterization of group I as indicated above.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 6,8-14,23-31 and 36-38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The 4/21/08 amendments have added the language "HF electromagnetic field." The original specification does not teach "HF", but rather only electromagnetic fields. "HF" should be deleted.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10-14,23-26, 29-31 and 36-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 is vague and indefinite how the steps of claim 6 are related to "... controlling the production of homeopathic products ..." and the scope of the homeopathic products produced (e.g. will the method of claim 6 control the production of any homeopathic product ?).

Claim 11 is directed to providing an anticoagulant source substance and placing the substance in the electromagnetic field. As presently claim the anticoagulant is not placed in the blood sample. It is not clear what the step of placing the anticoagulant in the field is accomplishing without being added to the sample. Is the anticoagulant acting as a blank sample ?

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 6, 8-14,23-31 and 36-38 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 9-14 and 24-28 of U.S. Patent No. 6,541,978. Although the conflicting claims are not identical, they are not patentably distinct from each other because both are directed to methods of applying more than one electromagnetic fields to biological sample and analysis of the subsequent fields to determine information concerning coagulation inhibition.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6, 8-9 and 27-28 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Barns (USP 5,583,432).

Barns teach a method and apparatus for determining the fibrinogen characteristics of blood based upon application of at least two a.c. frequencies applied to the blood sample. Column 6 lines 3+ teach applying one, two or four different electromagnetic fields to the sample and measuring the frequencies and magnitude. This data is correlated to chemical and/or physical parameters, such as fibrinogen concentration and viscosity, of the sample. The Office has read the claimed *"first transducer-receiver having an electromagnetic coil .... and transforms the field into a*

first electric current" and *"a second ... into a second electric current"* on the taught *application* **of at least two a.c. frequencies.** Column 1 lines 25-67 teach that measurement of fibrinogen levels are manifested by increases in plasma viscosity. The Office has read the claimed *"testing for inhibition of coagulation"* on the taught fibrinogen and viscosity measurements. It is advantageous to make these measurements without physical contact with the sample by indirect means such as electromagnetic fields. Column 4 lines 43+ also teach the advantages of making measurements without physical contact "... help preclude biohazard and to provide an analogue or digital readout ..." Columns 7-8 lines 62-7 respectively teach use of two identical sets of the device where one has the sample of interest and the other a "dummy sample". Column 11 lines 8-22 teach the subtraction to determine hemoglobin level. The Office has read this on the claimed step of subtracting the second signal from the first signal to determine the effect of the sample and correlation to a coagulation inhibition level.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 10-14, 23-26, 29-31 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barns.

See Barns supra.

Barns is silent to the application of data generated to the production of homeopathic products of claim 10 and the steps of providing an anticoagulant source substance of claim 11.

With respect to claim 10, in light of the above 35 USC 112 second paragraph issues, it is not clear how the claimed method is used to control the production of homeopathic products or what the products might be. However, the Office maintains it would have been desirable to use a well known method that measures physical parameters of a solution without physical contact to gain the advantages of "... help

preclude biohazard and to provide an analogue or digital readout ..." It would have been within the skill of the art to modify Barns and monitor the physical parameters of the solution for the purpose of controlling production using the method of Barns to gain the above advantages.

With respect to claim 11, in light of the 35 USC 112 second paragraph rejections, it is not clear what the placing of the anticoagulant in the excitation field is accomplishing other than acting as a blank sample. It would have been within the skill of the art to modify Barns and include the anticoagulant in the taught "dummy sample" to gain the advantages of subtracting the effect of the anticoagulant on the electromagnetic field to gain the advantages of a more accurate sample measurement.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Tuesday and Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lyle A Alexander
Primary Examiner
Art Unit 1797

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